

# EXHIBIT 1

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

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<b>In Re: PHARMACEUTICAL INDUSTRY</b>	:
<b>AVERAGE WHOLESALE PRICE</b>	:
<b>LITIGATION</b>	:
	:
<b>THIS DOCUMENT RELATES TO</b>	:
	:
	<b>MDL NO. 1456</b>
	:
	<b>Master File No. 01-CV-12257-PBS</b>
	:
<i>State of Nevada v. Abbott Laboratories,</i>	:
<i>et al.</i> , Case No. CV02-00260 (2nd Jud. Dist. Ct.)	:
(Nevada I),	:
	:
	:
<i>State of Nevada v. American Home Prods. Corp.,</i>	:
<i>et al.</i> , 02-CV-12086-PBS ( <i>Nevada II</i> )	:
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**STIPULATION**

The parties in the above-captioned actions hereby stipulate that the State of Nevada does not assert claims on behalf of any State entities or agencies other than the Nevada Medicaid program.

DATED: December \_\_, 2005

\_\_\_\_\_  
Steve W. Berman  
*Counsel for the State of Nevada*

\_\_\_\_\_  
Ronald G. Dove, Jr.  
*Counsel for Defendant SmithKline Beecham Corp.  
d/b/a GlaxoSmithKline (on behalf of all defendants  
in the above-captioned actions)*

# EXHIBIT 2



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December 16, 2005

**VIA E-MAIL AND ELECTRONIC SERVICE**

Jeniphr A.E. Breckenridge  
Hagens Berman Sobol Shapiro LLP  
Suite 2900  
1301 Fifth Avenue  
Seattle, WA 98101

**Re: Montana AWP Action**

Dear Jeniphr:

This letter is in response to your letter dated December 12, 2005, regarding discovery issues in the Montana AWP case.

**A. General Issues**

**1. Scope of Montana's Claims**

We understand that, subject to your client's approval, you will prepare a stipulation confirming that Montana's claims do not include claims on behalf of any State agencies in Montana other than Montana Medicaid. Please forward us that stipulation once it has been drafted.

Because the Plaintiff in this action is the State of Montana, we believe that it is relevant to discover what other State entities and officials knew and what prices they paid for drugs. Based on Mr. Buska's Rule 30(b)(6) testimony, we know that the following non-Medicaid State entities purchased drugs: the State Employees Benefits Plan (purchased through the Department of Administration), the Department of Corrections, the state workers' compensation fund, and the Addictive and Mental Disorders Division (which, like Montana Medicaid, is within DPHHS). We believe that we are entitled to limited discovery from these entities – discovery targeted

[06735-0059/SL053480.068]

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towards the entities' knowledge, the prices paid for drugs, and the extent to which that information was shared with Medicaid.

## **2. Time Period**

You have agreed to produce the remaining responsive documents and electronic data in Montana's possession, custody and control for the time period 1991-1997. We note that Montana's production to date has included many documents from the pre-1997 period. Please inform us when we can expect to receive Montana's production of the remaining documents and data for this time period. To be clear, however, our receipt of these documents from Montana in no way constitutes agreement with your argument that the time period for any document production should be "bilateral."

## **3. Files Searched for Responsive Documents**

We understand from your letter that Montana continues to refuse to search for additional responsive documents within the executive or legislative branches – even to the extent that individuals in or files from those branches (including file archives) have documents relating to drug pricing and reimbursement, proposals to amend the rate for reimbursement of drugs in Montana's Medicaid program, drug rebates, or any of the allegations made in the State's Complaint. We believe that we are at an impasse here.

We also understand the State will produce all responsive documents in its possession from other relevant file holders. Although we will continue to inquire during depositions about whom within Montana Medicaid or other State agencies may have responsive documents, our position remains that Montana (which is in a far better position to determine who the relevant file holders may be) has an independent obligation to locate and produce responsive documents.

## **4. Litigation Hold on Destruction of Documents**

You still have not answered our question, first raised on November 23, whether and when Montana has initiated any litigation hold to prevent the destruction of documents relevant to the lawsuit that the State filed over three years ago. We learned yesterday from Dan Peterson's deposition testimony that the State issued some sort of litigation hold last week, but our question is whether the State issued such a hold prior to or at the inception of this suit. The fact that the Defendants have sought

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Montana's compliance by motion does not allow the State to ignore our request, nor did the State's response to that motion "address" this issue, beyond indicating that the State has not confirmed whether or not such a hold has been issued.

**B. Documents Identified in Our November 11, 2005 Letter**

First, with respect to emails and electronic files, you requested that Defendants identify the individuals whose emails we would like searched and provide specific search terms. Defendants believe it is the State's burden to ensure that its discovery obligations are satisfied. Nonetheless, Defendants ask that the State begin by searching the emails of the following former and current Medicaid employees whose depositions we have either taken or noticed: Denise Brunett, Jeff Buska, Russ Cater, John Chappuis, Mary Angela Collins, Mary Dalton, Doug Girard, Shannon Marr, Dan Peterson, and Duane Preshinger (current employees); and Randy Bowsher, Maggie Bullock, Nancy Ellery, Chuck Hunter, Jeff Ireland, and Dorothy Poulsen (former employees). As for specific search terms, we intend to provide you, early next week, with a list similar to that proposed yesterday by the Defendants for Nevada's search. Like in Nevada, our position is that all electronic documents need to be searched and produced, not just emails.

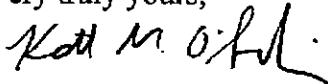
Second, given Montana's refusal to search legislative and executive files, we are not surprised by your failure to identify any additional documents related to legislative hearings or testimony. If any such documents are located in subsequent searches, we expect they will be produced. Third, we confirm receipt of your production of Drug Utilization Review Board records.

Your December 12 letter addresses only four of the sixteen categories of documents set forth in our November 11 letter. No response was given with respect to numbers 4-6 and 8-16 from that letter, other than informing us that either you or Mr. Mazurek would provide Montana's response at an unidentified time in the future. As you know, our December 1 letter merely reiterated our request for the documents specifically identified in our letter of November 11. Given the pending discovery deadline and numerous depositions scheduled, please let us know no later than January 3 when Montana intends to produce the requested documents.

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Finally, many additional categories of documents were identified during the depositions of Montana's 30(b)(6) witnesses earlier this week. We will address production of these documents in a separate letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kath M. O'Sullivan".

Kathleen M. O'Sullivan

cc: Joseph P. Mazurek (via e-mail)  
Counsel of record (by electronic service)

# EXHIBIT 3



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November 15, 2005

Carson City, NV

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

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**CERTIFIED COPY**

In Re: PHARMACEUTICAL

INDUSTRY AVERAGE WHOLESALE

PRICE LITIGATION

MDL DOCKET NO.

CIVIL ACTION

01CV12257-PBS

THIS DOCUMENT RELATES TO:

ALL ACTIONS

VOLUME I

DEPOSITION OF CHARLES DUARTE

NOVEMBER 15, 2005

CARSON CITY, NEVADA

REPORTED BY: STEPHANIE ZOLKOWSKI CCR 283

COMPUTER-ASSISTED TRANSCRIPTION BY: caseCATalyst

Henderson Legal Services  
(202) 220-4158

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Carson City, NV

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1 testimony while legislature of was in session?

2 A Joint Sub Committees on Finance and Ways and  
3 Means. The Joint Committee on Health and Human  
4 Services. Individual committees for the Senate and  
5 the Assembly on Health and Human Services.

6 I believe that's the primary bodies where I  
7 delivered testimony.

8 Q With regard to your testimony before these  
9 committees, is there a particular staff person or  
10 staff people that you deal with on each committee? Or  
11 do you deal mostly directly with legislators? How  
12 does that work?

13 A I deal with both.

14 On occasion the staff will be asked to work  
15 with me prior to my presentations and have specific  
16 questions in mind which they would like me to address.

17 On occasions I get requests from individual  
18 legislators to present specific information. On  
19 occasion probably most often they'll just ask  
20 questions as they come up and I answer to the best of  
21 my ability. Sort of like here.

22 Q With regard to the Interim Committee on

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1 Health Care is there a particular staff person on that  
2 committee that you have dealt with with regard to your  
3 testimony relating to reimbursement of prescription  
4 drugs?

5 A There have been several. Particularly an  
6 analyst named Marsheila Lyons.

7 Q Is there anyone else on that committee that  
8 comes to mind?

9 A Not offhand.

10 Q How about the Interim Committee on Persons  
11 With Disabilities? Is there a staff person or staff  
12 people there who you have dealt with on the  
13 prescription drug issue?

14 A No.

15 Actually, I dealt more directly with the --  
16 I'm sure they had a staff person. But my dealings  
17 were with the legislators.

18 Q Is there a particular legislator who you  
19 dealt with that on Committee?

20 A I can't remember the chair. I think it was  
21 Dina Titus. Senator Dina Titus.

22 Q How about the Interim Finance Committee? Is

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1 there a staff person on that Committee you have dealt  
2 with on prescription drug issues?

3 A Steve Abba.

4 Q A-b-b-a?

5 A Yeah.

6 Q Anyone's else?

7 A No.

8 Q The Interim Standing Committee For Children  
9 and Families, is there a particular person you dealt  
10 with on prescription issues?

11 A No.

12 Q Is there a legislator on that Committee with  
13 a particular interest in prescription drug interest --

14 A Not to my knowledge.

15 Q -- issues?

16 Turning to the committees during the  
17 legislative session, is there a staff person on the  
18 Joint Sub Committee on Finance and Ways and Means that  
19 you dealt with in connection with testimony relating  
20 to prescription drug issues?

21 A Steve Abba.

22 Q Anyone else?

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1 A No.

2 Q How about the Joint Committee on Health and  
3 Human Services?

4 A Marshelia Lyons.

5 Q Anyone else?

6 A Not that I can recall.

7 Q Would Marshelia Lyons also be your contact on  
8 the individual committees on Health and Human  
9 Services?

10 A I can't recall who the staff people were  
11 during the legislative session. I'm sorry.

12 Q In general are there particular legislators  
13 who have a real active involvement on this  
14 prescription drug reimbursement issue that you can  
15 identify?

16 A Can you kind of tell me, give me, some  
17 context? A number of them have been involved. But  
18 how do you mean? To what extent?

19 Q I guess I'm looking for -- I understand to  
20 some extent all legislators may be involved in voting  
21 on an issue --

22 A Right.

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1 Q -- or are aware of it. I don't know if there  
2 are one or several legislators who really made the  
3 prescription drug reimbursement issue a real issue for  
4 them so that they contact you more than normal or  
5 you're in communication with them more than you would  
6 be with your ordinary legislators.

7 A I think one was Senator Ray Rawson. He's no  
8 longer in the legislature. The other is Assemblywoman  
9 Ellen Koivisto.

10 Q Could you spell that?

11 A K-o-i-v-i-s-t-o, I believe.

12 And then finally in terms of active  
13 involvement, Senator Barbara Cegavske. Don't ask me  
14 how to spell her name. I think it's something like  
15 C-e-g-a-v-s-k-e, I think.

16 Q How about with the Governor's office? Do you  
17 ever prepare presentations for the Governor or staff  
18 in the Governors' office?

19 A Yes.

20 Q Have you ever prepared presentations on  
21 prescription drug price issues for either the Governor  
22 or some of the Governor's staff?

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1 A Not specifically pricing issues.

2 Q Have you prepared any presentations that  
3 relate in some way to prescription drug reimbursement  
4 issues?

5 A Yes.

6 Q On how many occasions have you prepared such  
7 presentations?

8 A I can't recall the exact number. Two or  
9 three perhaps.

10 Q Are there people on the Governor's staff that  
11 have served as principal contact with you on the  
12 prescription drug reimbursement issue?

13 A Yes.

14 Primarily my contact is through the  
15 Director's office. He's direct report to the Governor  
16 while I'm not.

17 So the people that we individual -- we  
18 normally met with a gentleman named Michael Hillerby  
19 and his predecessor Mary Bell Batcher, B-a-t-c-h-e-r.

20 Both -- she was and he is the Chief of Staff  
21 for the Governor.

22 Q Has the Governor ever sat in on any of these

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1 A The Public Employee Benefit Fund Board.

2 Q What is your role in the Public Employee  
3 Benefit Fund Board?

4 A I am a board member.

5 Q How does your role as a board member relate  
6 to prescription drug reimbursement?

7 A We occasionally deal with issues related to  
8 the pharmacy benefit provided to state and local  
9 employees who participate in the Public Employee  
10 Benefit Plan.

11 Q Who pays for the pharmacy benefit for Nevada  
12 State employees?

13 A The State and the employees themselves.

14 Q Does the State contract with a third party  
15 administrator or --

16 A Yes.

17 Q What is that third party administrator?

18 A Catalyst RX.

19 Q I take it Catalyst RX is a third party  
20 administrator that deals with the prescription drug  
21 pharmacy benefit; is that correct?

22 A Yes.



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1           Q    Is there a third party administrator that the  
2 State is contracted with to deal with physician  
3 administered drugs and the medical benefit?

4           A    Yes. Benefit Planners. They're the claims  
5 administrator.

6           Q    Do you know if prescription drugs that the  
7 State reimburses for in connection with the Public  
8 Employee Benefit Fund, whether that reimbursement is  
9 based on AWP?

10          A    I do not know.

11          Q    Who would know the answer to that?

12          A    Woody Thorn who is the Executive Officer for  
13 the Public Employee Benefit Plan.

14          Q    In addition to the Public Employee Benefit  
15 Fund do you serve on any other boards that involve in  
16 any way issues relating to prescription drug  
17 reimbursement?

18          A    No.

19          Q    In your position as board member of the  
20 Public Employee Benefit Fund have you ever had  
21 discussions with Woody Thorn about AWP?

22          A    Not to my recollection.

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1           **Q    Do you know if Woody Thorn is aware of the**  
2 **lawsuit that the State of Nevada has filed that is the**  
3 **subject of this deposition?**

4           **A    I don't know.**

5                   If I could go back, Woody and I have had  
6 discussions about joint purchasing activities between  
7 our different programs.

8                   I don't recall whether we specifically  
9 touched on AWP. It's not an area that we have to deal  
10 with when we work through a pharmacy benefit manager.

11           **Q    When you say joint purchasing activities,**  
12 **what do you mean by that?**

13           **A    Looking at the potential of similar benefit**  
14 **administrator for a Medicaid pharmacy benefit and**  
15 **public employee board benefit.**

16           **Q    So is there some exchange of information**  
17 **between your Department, Division of Health Care**  
18 **Financing and Policy, and the Public Employee Benefit**  
19 **Fund?**

20           **A    No. Not formally.**

21           **Q    But informally?**

22           **A    This occurred at the Governor's Drug Summit**

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1 in Las Vegas this summer where we had some discussion  
2 about joint purchasing activity.

3 Q You mentioned the Governor's Drug Summit in  
4 Las Vegas.

5 What was that?

6 A The Governor in the last State of the State  
7 identified the need for the State to look at ways of  
8 providing prescription drugs to its residents more  
9 cost effectively and asked a number of policy makers  
10 to get together and talk about initiatives that might  
11 achieve that goal.

12 I was just one of the participants.

13 Q Were there any handouts or other documents  
14 either distributed or generated by the Governor's Drug  
15 Summit?

16 A Yes.

17 Q I would certainly ask any documents from the  
18 Governor's Drug Summit that relate to prescription  
19 drug reimbursement issues or AWP or any of the other  
20 issues that we have identified in our document  
21 requests, that those documents be produced to us.

22 Who all participated in the Governor's drug

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1 summit?

2 A It's a list of probably close to a hundred  
3 people. I couldn't tell you who participated  
4 entirely.

5 Q Do you know if Mr. Terry participated?

6 A No. He did not. Unless he snuck in. I  
7 don't think so.

8 MR. TERRY: I'm not under oath.

9 BY MR. DOVE:

10 Q We certainly would ask if a list of  
11 participants at the Governor's Drug Summit exists it  
12 be provided to us.

13 Do you know whether this lawsuit was  
14 discussed at the Governor's Drug Summit?

15 A I didn't hear it discussed.

16 Q Was Woody Thorn present at the Governor's  
17 Drug Summit?

18 A Yes.

19 Q Other than the Public Employee Benefit Fund  
20 and Nevada Medicaid are there any other State agencies  
21 or State affiliated groups that are involved in either  
22 the purchase or reimbursement of prescription drugs?

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1 and so they actually purchase and reimburse for aids-  
2 related treatment. Drugs for aids-related treatment.

3 Q Would representatives from each of these  
4 entities have been present at the Governor's Drug  
5 Summit in Las Vegas?

6 A With the exception of Child and Family  
7 Services there were representatives from Mental Health  
8 as well as from the Health Division. Also from the  
9 Director's office representing the State Pharmacy  
10 Assistance Program.

11 Q Didn't mean to cut short your list.

12 Are there any other entities that are either  
13 State agencies or affiliated in some way with the  
14 State that either purchase or reimburse for  
15 prescription drugs?

16 A Not to my knowledge.

17 Q Is there a Nevada bureau of prisons or  
18 something?

19 A Yeah.

20 Q Would they --

21 A I'm sure they do. Yeah. I'm just not  
22 familiar with them. They run their medical programs.

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1 Department of Health and Human Services.

2 Then specifically I have statutory authority  
3 under the Director to administer the program in my  
4 Division.

5 So Mr. Wilden actually serves as the State  
6 Medicaid Agency. I work under his direction and  
7 through statute have the authority to administer the  
8 programs.

9 **Q What is the general role of the Department of**  
10 **Human Resources in the State of Nevada?**

11 A The general role?

12 **Q Yes.**

13 A They have administrative responsibility for  
14 Medicaid and the State Children's Health Insurance  
15 Program.

16 Do you want me to go down the list? It's an  
17 extensive list.

18 **Q I'm really more interested in getting the**  
19 **sense of their general coverage and then we're going**  
20 **to focus in on your particular Division.**

21 A They're responsible for administration of a  
22 wide array of Federally funded, State funded -- and

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1 A Yes.

2 Q I would like to go back to some of those  
3 agencies and ask you a few more questions about that.

4 You mentioned the State Pharmacy Assistance  
5 Program.

6 Do you recall that?

7 A Yes.

8 Q Who is the head of the State Pharmacy  
9 Assistance Program?

10 A Mike Wilden is responsible overall for it.  
11 But the manager for the State Pharmacy Assistance  
12 Program is Laurie Olson, L-a-u-r-i-e.

13 Q Is she the person who would be most  
14 responsible for the purchase and/or reimbursement of  
15 prescription drugs for that program?

16 A Yes.

17 Q Is there anyone else at that program who  
18 would be knowledgeable regarding the purchase or  
19 reimbursement of prescription drugs?

20 A Besides Laurie perhaps their vendor, Catalyst  
21 RX.

22 Q Have you ever spoken with Laurie regarding

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1 the purchase or reimbursement of prescription drugs?

2 A Yes.

3 Q What did you discuss?

4 A A variety of issues related to primarily to  
5 Medicare Part D and its implementation. Its enactment  
6 and implementation.

7 Q Is there any other issue you can recall  
8 discussing with her relating to prescription drugs?

9 A In general we talk -- we've had numerous  
10 discussions about Medicaid policy in support of our  
11 dual eligibles as they move toward the Medicare  
12 benefit effective January 1st. How we can continue to  
13 provide them with certain excluded drugs including  
14 barbiturates, benzodiazapene, over the counter  
15 medications and to cover co-payments for those  
16 individuals who participate in Medicare Part D and  
17 currently do not pay co-payments.

18 Q What's the organizational structure of the  
19 State Pharmacy Assistance Program? By that I don't  
20 mean ever single position but just more generally who  
21 do they report to within the larger State government?

22 A They are a part of the Director's office.



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1 And I don't know who Laurie directly reports to. It  
2 may be Michael Wilden. It may also be Mary Liveratti,  
3 the Deputy Director of Health and Human Resources.

4 Q Is Mary Liveratti related to John Liveratti?

5 A Yes.

6 Q Husband and wife?

7 A Yes.

8 Q Who is the Division -- who is the head of the  
9 Division of Mental Health and Developmental Services?

10 A The Administrator is Carlos Brandenburg,  
11 B-r-a-n-d-e-n-b-e-r-g.

12 Q Is he the person who would have the most  
13 knowledge regarding the purchase or reimbursement of  
14 prescription drugs by the Division of Mental Health  
15 and Developmental Services?

16 A I believe the individual who would probably  
17 have the most knowledge is Dr. Emanuel Ebo, E-b-o. He  
18 is a doctor of pharmacy. What's the designation?  
19 Capital R Ph.D.

20 Q Other than Dr. Ebo is there anyone else at  
21 the Division of Mental Health and Developmental  
22 Services who you think would be knowledgeable about

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1 the purchase or reimbursement of prescription drugs?

2 A Their medical director. I can't remember his  
3 name. It will come to me. I'm sorry.

4 Q But his position is medical director?

5 A Yes.

6 Q Have you ever spoken with either Mr.  
7 Brandenburg --

8 A Actually, Dr. Brandenburg.

9 Q Dr. Brandenburg or Dr. Ebo regarding, or the  
10 medical director regarding, purchase or reimbursement  
11 of prescription drugs?

12 A More specifically I have spoken with Dr.  
13 Brandenburg and Dr. Ebo about that.

14 Q What sort of issues have you discussed with  
15 them?

16 A Utilization management procedures related to  
17 the issuance of mental health drugs including anti-  
18 convulsives, atypical and typical anti-psychotic  
19 medications and anti-depressants.

20 Q What department does Division of Mental  
21 Health and Developmental Services fall under?

22 A Department of Health and Human Services.

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1 Q Again, Michael Wilden would be --

2 A Director.

3 Q -- responsible for overseeing that Division?

4 A Yes.

5 They're organized slightly different in that  
6 Dr. Brandenburg is appointed by the Governor whereas  
7 other administrators in the department are appointed  
8 by the Director. There's a little bit of different  
9 line of authority there, at least in terms of  
10 appointment.

11 Q Who is the head of the Division of Child and  
12 Family Services?

13 A Currently they don't have an administrator.  
14 Their Deputy Administrator is Diane Comeaux,  
15 C-o-m-e-a-u-x.

16 Q Would she be the person most knowledgeable  
17 regarding the purchase or reimbursement of  
18 prescription drugs by that Division?

19 A I don't believe so.

20 Q Who would be the most knowledgeable person?

21 A Actually, I do not know. Perhaps you might  
22 want to put down Patty Merrifield. P-a-t-t-y

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1 M-e-r-r-i-f-i-e-l-d.

2 Q Have you ever spoken with anyone at the  
3 Division of Child and Family Services regarding  
4 prescription drug issues?

5 A Not that I recall.

6 Q The Division of Child and Family Services,  
7 does it also fall under the Department of Health and  
8 Human Services?

9 A Yes.

10 Q Do you know who the head of Nevada Bureau of  
11 Prisons is?

12 A No, I do not.

13 Q Do you know anyone at the Nevada Bureau of  
14 Prisons who would be knowledgeable regarding the  
15 purchase or reimbursement of prescription drugs?

16 A You may want to -- I don't know the  
17 individual's name but their Medical Director I'm  
18 certain might know something about that or perhaps  
19 their fiscal officer, their administrative services  
20 officer. I don't know their names.

21 Q We discussed the Public Employees Benefit  
22 Fund and Woody Thorn.

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1 I believe you testified Woody Thorn would be  
2 the person at that Fund most knowledgeable regarding  
3 the purchase or reimbursement of prescription drugs;  
4 is that correct?

5 A Yes.

6 Q Is there anyone else at the Fund who would be  
7 knowledgeable regarding the purchase or reimbursement  
8 of prescription drugs?

9 A Perhaps his Deputy, Leslie Johnstone,  
10 J-o-h-n-s-t-o-n-e.

11 Q Anyone else?

12 A Jim Wells, their Fiscal Officer.

13 Q Are there any other agencies or State  
14 affiliated organizations or entities that are involved  
15 in the purchase or reimbursement of prescription drugs  
16 to your knowledge?

17 A Yes.

18 I previously testified the Health Division  
19 administers the ADAP Program for the State of Nevada.

20 Q Who is the head of that program?

21 A I don't know the name of the individual in  
22 charge of ADAP. But the administrator and former I

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1 think ADAP Chief would probably know. The  
2 Administrator is a gentlemen named Alex Haartz,  
3 H-a-a-r-t-z. The Deputy Administrator is a gentleman  
4 named Richard Whitley, W-h-i-t-l-e-y.

5 Q Would they be the persons most knowledgeable  
6 regarding the purchase or reimbursement of  
7 prescription drugs by that program?

8 A Yes.

9 Q Have you ever had discussions with either  
10 those two individuals regarding the purchase or  
11 reimbursement of prescription drugs?

12 A Yes.

13 Q What did you discuss?

14 A I discussed some methodologies for  
15 administering the ADAP program in a manner which might  
16 assist them with some cash flow issues.

17 Q Any other topics you discussed with them  
18 regarding -- relating to prescription drug  
19 reimbursement?

20 A Use of pharmacy point of sales systems for  
21 administration of 340 B price drugs.

22 Q Anything else?

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1 Amendment or we withdrew this one and submitted  
2 another one. I can't recall the process.

3 Q Do you recall if there was a similar meeting  
4 for public comment on the change in the drug  
5 reimbursement rate from AWP minus 10 percent to AWP  
6 minus 15 percent?

7 A Not with the Governor's staff. There was a  
8 public hearing.

9 Q After that public hearing did you meet with  
10 anyone with regard to the result of that public  
11 hearing?

12 A My recollection, and I have to go back to the  
13 records, my recollection was we actually met with the  
14 Director and representative, I think I referred to  
15 this meeting already in testimony, representatives of  
16 Walgreens, the National Association of Chain Drug  
17 Stores, the Nevada Retailers Association, prior to our  
18 implementation of the revision in the discount policy  
19 off of average wholesale price.

20 I can't remember -- I believe it was prior to  
21 but I'm not certain.

22 Q Do you recall meeting -- you said you met

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1 with Mr. Wilden and the representatives from Walgreens  
2 and some of the other providers.

3 Did you recall meeting with either the  
4 Governor or anyone in the Governor's staff regarding  
5 that particular change in reimbursement?

6 A No.

7 The reason was, I explained in prior  
8 meetings, was that we already had word that a large  
9 number of the specialty practices were going to drop  
10 out as a result of State Plan Amendment. I guess this  
11 is 03-031. And we had not had that kind of response  
12 to proposed changes in reimbursement method for the  
13 pharmacies.

14 In fact, my recollection was they finally  
15 agreed to it. The pharmacy representatives that is.

16 Q In that sentence that starts out with  
17 "Mr. Duarte indicated comments from this meeting," the  
18 last clause of that sentence says "for impact on  
19 access to services and the state budget," I think I  
20 understand impact to access to services.

21 What do you mean impact on state budget?

22 A The legislature had authorized us to reduce



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1 Governor's office need to be involved.

2 Keep in mind that the executive branch is  
3 separate from the legislative and, of course, has  
4 authority to administer the program as it needs to  
5 within its budget authority.

6 And while -- it's not necessary for us to  
7 take these kinds of programs to the legislature for  
8 approval during the interim, the interim between  
9 legislative sessions, unless we believe that there's  
10 something that they need to get involved with.

11 In this case we didn't believe this was  
12 something they needed to be involved with. We did  
13 report this in 2003 session as an administrative  
14 action to save money related to the pharmacy program.  
15 As such we did report it to them. But really was the  
16 executive branch initiative. The Director's office  
17 was involved. I can't say whether or not he informed  
18 the Governor's office. I assume so.

19 Q When you say you reported this in 2003, what  
20 does that mean? You testified at the legislature  
21 about it?

22 A Yes.

# EXHIBIT 4

April Townley

January 27, 2006

Reno, NV

1

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

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In Re: PHARMACEUTICAL, ) MDL DOCKET NO.

INDUSTRY AVERAGE WHOLESALE ) CIVIL ACTION

PRICE LITIGATION ) 01CV12257-PBS

-----)

)

THIS DOCUMENT RELATES TO: )

ALL ACTIONS )

-----x

DEPOSITION OF APRIL TOWNLEY

JANUARY 27, 2006

RENO, NEVADA

REPORTED BY: AMY JO TREVINO, CCR #825, CSR #5296, RPR

COMPUTER-ASSISTED TRANSCRIPTION BY: CASE CATALYST

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<p style="text-align: right;">18</p> <p>1 A. I know that we used it and it was happening</p> <p>2 in the latter part when I was there, and I don't</p> <p>3 really remember what we did with it. The last two</p> <p>4 years that I was at Medicaid I wasn't responsible for</p> <p>5 rates, I just was responsible for the program itself,</p> <p>6 so I pretty much dropped out of that issue.</p> <p>7 Q. We will get into that a little bit, I will</p> <p>8 go through your work history and when you --</p> <p>9 A. All right. Did what.</p> <p>10 Q. Did what and were responsible for different</p> <p>11 things.</p> <p>12 A. Okay.</p> <p>13 Q. Do you recall discussing the term AWP or</p> <p>14 issues relating to AWP with other people in Nevada</p> <p>15 Medicaid?</p> <p>16 A. Yes, there would have been discussions and</p> <p>17 I would have been part of them. I don't remember any</p> <p>18 specifics, but you know, in establishing rates, that</p> <p>19 kind of thing, many people were consulted.</p> <p>20 Q. Do you recall any particular people that</p> <p>21 would, you would consult where you might discuss AWP?</p> <p>22 A. Well, there was a person by the name of</p>	<p style="text-align: right;">20</p> <p>1 A. Well, one of the type of studies that we</p> <p>2 often did was to, you know, contact other states and</p> <p>3 see how they were reimbursing, you know, not just</p> <p>4 pharmacy but many rates, and so I would say I don't</p> <p>5 know that I talked to them because generally staff</p> <p>6 would have been the ones, you know, calling and</p> <p>7 talking with them and I would just have reviewed the</p> <p>8 reports. So it's, you know, it's just something that</p> <p>9 could have happened because that's the methodology we</p> <p>10 used every year to check how things were going in</p> <p>11 other states.</p> <p>12 Q. Do you recall discussing AWP with any</p> <p>13 legislative staff?</p> <p>14 A. Oh, you know, it could have happened. What</p> <p>15 happens is the process is that staff put together the</p> <p>16 budget and we would base that on, you know, AWP a</p> <p>17 factor and dispensing fee. That may have been based</p> <p>18 on calling other states. I don't remember what</p> <p>19 exactly we, for each year what happened, but then our</p> <p>20 recommendations for the budget would go to our</p> <p>21 executive budget office and from there it would go to</p> <p>22 the legislature, so anywhere along the process I</p>
<p style="text-align: right;">19</p> <p>1 Jeff, and I have forgotten his last name, that was a</p> <p>2 pharmacy consultant in the '80s, and then there was</p> <p>3 Steve Bradford who was also a pharmacy consultant,</p> <p>4 and then Laurie Squartoff. And then, we also in the</p> <p>5 early years we had a pharmacy committee, and I don't</p> <p>6 remember, you know, whether it was specifically on an</p> <p>7 agenda or not, but I would assume that we would have</p> <p>8 talked to them about it. That was the nature of what</p> <p>9 we did with these committees, talked to them about</p> <p>10 policies and rates.</p> <p>11 Q. You say you spoke with, you mentioned a</p> <p>12 Jeff, was a pharmacy consultant, do you know if Jeff</p> <p>13 is still working with Nevada Medicaid today or --</p> <p>14 A. He left in the '80s and I heard, I just</p> <p>15 heard he went here, there and everywhere, but I don't</p> <p>16 have any idea where he is.</p> <p>17 Q. Do you have any idea where Steve Bradford</p> <p>18 is?</p> <p>19 A. He is dead.</p> <p>20 Q. You mention discussing the term AWP with</p> <p>21 the pharmacy committee, do you recall discussing the</p> <p>22 term AWP with other people at other state agencies?</p>	<p style="text-align: right;">21</p> <p>1 could have spoken with someone. I don't remember any</p> <p>2 major incident about it, though.</p> <p>3 Q. Are you familiar with the term WAC or</p> <p>4 wholesale acquisition cost?</p> <p>5 A. No, I'm afraid I don't remember that one.</p> <p>6 Q. Miss Townley, would you please briefly</p> <p>7 describe your educational background since high</p> <p>8 school?</p> <p>9 A. Sure. I got a BA degree from Oklahoma</p> <p>10 State University in psychology, and I attended</p> <p>11 graduate school at the University of Nevada in the</p> <p>12 area of social psychology, and I completed everything</p> <p>13 except the dissertation just like everybody else.</p> <p>14 Q. Did you go directly from undergraduate</p> <p>15 school to graduate school?</p> <p>16 A. Yes.</p> <p>17 Q. After you finished graduate school what did</p> <p>18 you do next?</p> <p>19 A. Okay, I took a job with the State of Nevada</p> <p>20 and it was called, the agency was called</p> <p>21 Comprehensive Health Planning and they were a big</p> <p>22 agency type, I mean, important type agency in the</p>

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<p style="text-align: right;">118</p> <p>1 Medicaid program as a whole?</p> <p>2 A. Oh, yeah. Started in, you know, mid '80s</p> <p>3 it has always been a concern. One legislator</p> <p>4 referred to it as the black hole. So it's always</p> <p>5 been an issue, just like it is naturally.</p> <p>6 Q. Did you feel you were under any sort of</p> <p>7 pressure to reduce expenditures at the Medicaid</p> <p>8 program in light of this over arching concern?</p> <p>9 A. Well, we were given a budget and it was</p> <p>10 just like a line item for the medical payments, and</p> <p>11 so we followed the plan that we developed for the</p> <p>12 legislature and which we made calculations on what we</p> <p>13 thought it was going to be in the future. So if we</p> <p>14 thought that was getting away or running away or</p> <p>15 something, we had to throw up red flags and then you</p> <p>16 go through the whole process again of study</p> <p>17 evaluation up the chain, what are we going to do, and</p> <p>18 there were several times when we actually had to make</p> <p>19 a budget cut and you know, we didn't, I don't think</p> <p>20 anything was done to the pharmacies in those cuts.</p> <p>21 But you know, like we cut out podiatry and things</p> <p>22 like that. So I always felt responsible for</p>	<p style="text-align: right;">120</p> <p>1 then many legislators would say I'm going to go to</p> <p>2 Carson City and find all the waste, and Medicaid went</p> <p>3 up 235 percent last year so we are going to go after</p> <p>4 them, and so you knew you always had that kind of</p> <p>5 thing facing you and within Nevada people are you</p> <p>6 know, it's a very limited Medicaid program in terms</p> <p>7 of who is eligible. And so I have lost my train of</p> <p>8 thought, isn't that nice. I'm fatiguing, that's an</p> <p>9 expression.</p> <p>10 Q. Let us know if you want to take another</p> <p>11 break, because it is getting into the afternoon. Do</p> <p>12 you ever recall any specific concerns being raised</p> <p>13 about the escalating costs of prescription drugs in</p> <p>14 the Medicaid program?</p> <p>15 A. Yes.</p> <p>16 Q. What do you recall about that?</p> <p>17 A. Well, it was just like all the other areas</p> <p>18 where there was an informa cost base to it that these</p> <p>19 costs, nobody liked them, you know, it was something</p> <p>20 is wrong with the big system, not with Medicaid here</p> <p>21 you know and how it was you know, too bad sometimes</p> <p>22 that we had to get rid of other programs to continue</p>
<p style="text-align: right;">119</p> <p>1 remaining within budget unless there were factors</p> <p>2 that I couldn't control and then it was time to go</p> <p>3 further.</p> <p>4 Q. When you said that there were always</p> <p>5 concerns about the cost of the Medicaid program in</p> <p>6 general, where did those concerns come from? Did you</p> <p>7 get, you know, concerns from the Governor's office,</p> <p>8 from the legislature, from the federal government, I</p> <p>9 mean where, who was kind of communicating those</p> <p>10 budgetary concerns?</p> <p>11 A. Well, the Governor's office you know when</p> <p>12 we had to make cuts came directly from them. And it</p> <p>13 was not only Medicaid that had to do something, it</p> <p>14 was many state agencies all up and down the line.</p> <p>15 And so, of course, all we could do was go in and take</p> <p>16 a look at the discretionary part of the program, and</p> <p>17 then in terms of you know, where else did it come</p> <p>18 from, it was just kind of an ethic within Nevada that</p> <p>19 if you are going to be an administrator of the</p> <p>20 program you are to live within your budget and you</p> <p>21 are to be responsible for making sure that happens</p> <p>22 without violating things like the federal law. And</p>	<p style="text-align: right;">121</p> <p>1 funding, you know, that the pharmacy part, that kind</p> <p>2 of thing, so yeah, it was and other areas where we</p> <p>3 felt like you know, there was not, you know, we had</p> <p>4 to pare down hospital costs just about all we could</p> <p>5 and that was also starting to really escalate, that</p> <p>6 kind of thing. So yes.</p> <p>7 Q. In light of these, you know, budgetary</p> <p>8 concerns about prescription drugs and other programs</p> <p>9 did Nevada Medicaid consider any sort of cost saving</p> <p>10 measures that they could undertake to reduce the</p> <p>11 expenditures?</p> <p>12 A. Oh, yeah, I mean we did that all the time.</p> <p>13 There was a day in 1992 where I had to stay the night</p> <p>14 before a board and talk about one measure after</p> <p>15 another to control costs, and so it was a constant.</p> <p>16 Q. Do you recall any measures being discussed</p> <p>17 or implemented that related to reducing the cost of</p> <p>18 prescription drugs?</p> <p>19 A. Not the cost, the dispensing fee was</p> <p>20 discussed.</p> <p>21 Q. Any other measures that you can remember</p> <p>22 for saving money and prescription drugs?</p>

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<p style="text-align: right;">122</p> <p>1 A. Well, we have always had utilization 2 controls on it. I think when I left it was still two 3 physician visits and three prescriptions per month, 4 then you had to get authorization after that, and I 5 am not sure what they are doing now, but there was an 6 attempt to curb the utilization. And then you know 7 there is just this constant review of individuals and 8 to look for the fraud and the abuse, both for 9 recipient, provider, that kind of thing. But no 10 measures, there was never a thing about we are going 11 to just say you can't have the cost, we are going to 12 keep costs the same we paid last year, you know, that 13 was not discussed or was discussed and thrown out. 14 And what would happen in terms of Nevada, too, is 15 that like a legislator would look at a list of what 16 is mandatory and what is operational and see pharmacy 17 and say okay, just get rid of that. There is a nest 18 of 20 million right there, and there was always the 19 struggle, you know with the legislature saying, you 20 know, if you don't give them the prescriptions they 21 will be getting it through the counties and the 22 counties will just have to, you know, blah, blah,</p>	<p style="text-align: right;">124</p> <p>1 State Mental Health Program, and I'm not sure about 2 whether she did any private, and at State Mental 3 Health I don't think she would have been, it would 4 have just been ordering drugs, so I don't know her 5 role as far as that. 6 Q. So you say she worked with the State Mental 7 Health Program, the State Mental Health Program had 8 its own program for acquiring prescription drugs? 9 A. Yes, they only dispense certain drugs and 10 so they, when they went out and got the best price, 11 based on what, I don't know their methodology but 12 they went out actually on a best price for the drug 13 is what I remember. 14 Q. And who, do you recall who at the 15 Department of Mental Health Services would have been 16 involved in that process of finding out the best 17 price? 18 A. No, I don't. I'm not real clear on their 19 whole program. I just know that it was different 20 than ours in that sense, and so I really, that's a 21 little aside, you know, that I really don't know 22 enough to be speaking to.</p>
<p style="text-align: right;">123</p> <p>1 blah. That's going to look cute on the record. 2 By the way, I want to point out some 3 things, Laurie Squartsoff did come and talk to me 4 sometimes, about things that she perceived, ideas 5 that she had and we didn't, I didn't pursue them. 6 Now, she, when she worked with Chris things may have 7 happened, you know, so I just wanted to point that 8 out. Laurie definitely was a very well educated 9 person, talked with other people. 10 Q. You said she was a pharmacist, she had a 11 pharmacy degree. What was her background, do you 12 know? 13 A. She had been an active pharmacist, and I 14 think she worked with another program, but I'm not 15 completely positive. She was a pharmacist, which I 16 think she just had an advance degree, I'm not sure. 17 Q. Do you recall, you say she was a 18 pharmacist, so would she have been, when she was a 19 pharmacist would she have been involved in the 20 acquisition of the drugs for use in her pharmacy, do 21 you remember anything like that? 22 A. I remember she was a pharmacist with the</p>	<p style="text-align: right;">125</p> <p>1 Q. Do you know if, just to finish the thought 2 on the Department of Mental Health Services, are they 3 within the same organizational umbrella as Medicaid 4 or are they under their own department? What is the 5 relationship between the Department of Mental Health 6 Services and Medicaid? 7 MS. BRECKENRIDGE: Today? 8 MR. DOVE: No, during her tenure. 9 THE WITNESS: I don't know today, but 10 basically we were, both were divisions within the 11 Department of Human Resources, so we purchased a lot 12 of services from them and so our relationship with 13 them was more like they were a provider, and you 14 know, and then I'm not sure what happened with the 15 director's office, with the administrators I can't 16 speak to. 17 Q. But was there one administrator overseeing 18 both the Medicaid Program and the Mental Health 19 Program? 20 A. Yes. 21 Q. Ms. Townley, are you aware that the State 22 of Nevada received rebates from manufacturers for</p>

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<p style="text-align: right;">126</p> <p>1 prescription drugs?</p> <p>2 A. Right.</p> <p>3 Q. Would you please describe the process by</p> <p>4 which manufacturer rebates were selected by Nevada</p> <p>5 Medicaid during your time there?</p> <p>6 A. Okay. Well, let's see, I'm real fuzzy on</p> <p>7 this, you know we had a staff member who worked under</p> <p>8 Laurie who identified the amounts and then Laurie</p> <p>9 reviewed it, and then I am just, I have forgotten</p> <p>10 what we did next.</p> <p>11 Q. Do you recall the staff person who worked</p> <p>12 with Laurie on this?</p> <p>13 A. I can see her face, the name escapes me,</p> <p>14 but Laurie supervised her.</p> <p>15 Q. Laurie would be the one to ask about it?</p> <p>16 A. Right, Laurie would be the one.</p> <p>17 Q. During your time at Nevada Medicaid were</p> <p>18 you satisfied that all the rebates that Nevada</p> <p>19 Medicaid was eligible for were being collected?</p> <p>20 A. Well, I was satisfied that we were catching</p> <p>21 up on it, but no, we had not done it all.</p> <p>22 Q. And why was that?</p>	<p style="text-align: right;">128</p> <p>1 distributed some of the vaccines, and then they had</p> <p>2 some other public health programs that I think had a</p> <p>3 direct component to it. And that's all I remember.</p> <p>4 Q. Did Nevada Medicaid ever compare the prices</p> <p>5 of which other agencies were purchasing drugs with</p> <p>6 the price at which Medicaid was reimbursing</p> <p>7 pharmacies and providers?</p> <p>8 A. Laurie did that, uh-huh.</p> <p>9 Q. Do you recall Laurie talking to you about</p> <p>10 this?</p> <p>11 A. Uh-huh.</p> <p>12 Q. What do you recall from that conversation?</p> <p>13 A. Well, she and I were talking about whether</p> <p>14 there was a possibility of you know, using the same</p> <p>15 kind of system that mental health did for acquiring</p> <p>16 certain basic drugs and you know, the issue became</p> <p>17 one of distribution, how do you do that and we</p> <p>18 weren't a pharmacy and we weren't set up to be a</p> <p>19 pharmacy so we would have to purchase the drugs and</p> <p>20 still find a pharmacy that would be willing to</p> <p>21 dispense it. So we were just talking about those</p> <p>22 kind of logistical problems and then I retired. Just</p>
<p style="text-align: right;">127</p> <p>1 A. It's fairly labor intensive as I recall to</p> <p>2 identify it, and it was just a matter of staffing.</p> <p>3 Q. Do you know whether the rebate money that</p> <p>4 was collected from the manufacturers was funneled</p> <p>5 back into the Nevada Medicaid Program?</p> <p>6 A. Yes, it was.</p> <p>7 Q. Do you know whether Nevada Medicaid sought</p> <p>8 rebates for physician administered drugs during your</p> <p>9 time there?</p> <p>10 A. I don't know for sure. I don't think so,</p> <p>11 but Laurie would be the one again, who would know.</p> <p>12 I'm pretty sure we didn't.</p> <p>13 Q. When you were at Nevada Medicaid to your</p> <p>14 knowledge were other state agencies involved in the</p> <p>15 purchasing or reimbursement of prescription drugs, I</p> <p>16 mean other than you already mentioned the Mental</p> <p>17 Health Division, but other than the Mental Health</p> <p>18 Division were there any other state agencies that</p> <p>19 were involved in the purchasing or reimbursement of</p> <p>20 prescription drugs?</p> <p>21 A. Let me think. Well, the Health Division</p> <p>22 was involved with vaccines and they purchased and</p>	<p style="text-align: right;">129</p> <p>1 in time. But she had, and she brought up the</p> <p>2 information to me showing, and she had even talked to</p> <p>3 the mental health people and they were very willing</p> <p>4 to work with us.</p> <p>5 Q. Do you know whether the State ever had any</p> <p>6 communication with Venicare or the Florida Keys?</p> <p>7 A. I'm not aware that we did. But I don't,</p> <p>8 you know, I wasn't made aware of every communication,</p> <p>9 but to my knowledge we were not.</p> <p>10 Q. What is the procedure for amending the</p> <p>11 pharmacy dispensing fee?</p> <p>12 A. Okay, I can just tell you about what it was</p> <p>13 like when I was there, when I left, but what we would</p> <p>14 do there was, we had to send things out for public</p> <p>15 review so what would happen would be that the State</p> <p>16 would come up with an alteration, change, and more</p> <p>17 than likely would have incorporated it into their</p> <p>18 budget projections, then that would have gone through</p> <p>19 the budget office and that would have gotten its</p> <p>20 approval, and then there would have also been</p> <p>21 correspondingly at the same time going out for public</p> <p>22 review or maybe before it went to the budget office</p>